

REMARKS/ARGUMENTS

In response to the Final Office Action mailed June 17, 2008, Applicants proposed to amend their application and request reconsideration in view of the proposed amendments and the following remarks. In this amendment, Claim 10 is proposed to be amended, no new claims have been added and no claims have been cancelled without prejudice so that Claims 10-14 remain pending. No new matter has been introduced.

Claim 10 was objected to for a minor informality that has been corrected through amendment. Accordingly, reconsideration and withdrawal thereof is respectfully requested.

Claims 10-11 were rejected as being unpatentable over WO 03/022178 to Andersen et al. (Andersen) and Claims 12-14 were rejected as being unpatentable over Andersen in view of U.S. Patent No. 6,863,685 to Davila et al. (Davila). These rejections are respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness.

“To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must

teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d, 488, 20 USPQ2d 1438 (Fed.Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.”

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

“To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1074). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).”

Andersen discloses an expandable stent comprising a tubular body made up of a plurality of separate tubular elements. Each tubular element comprises a plurality of rhombic-shaped closed cell elements.

Davila discloses an intraluminal medical device having integral markers.

Neither reference, whether taken alone or in combination, discloses an open cell design stent with individual stent segments as disclosed in amended independent claim 10. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

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